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MEMO ENDORSED  
p.2

Robert E. Hanlon

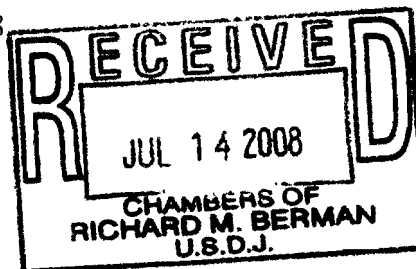
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July 14, 2008

VIA HAND DELIVERY

Honorable Richard M. Berman  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 650  
New York, NY 10007



Re: Merck Eprova AG and Merck KGaA v. ProThera, Inc., Civil Action No. 08 CV 00035 (RMB) (JCF)

Dear Judge Berman:

We represent Plaintiffs Merck Eprova AG and Merck KGaA (collectively "Merck") in the above-captioned case. In accordance with Your Honor's Individual Practice Rule 1(E), Merck respectfully requests an adjournment of the settlement conference scheduled for July 16, 2008 at 9:15 a.m. ("the July 16 settlement conference").

The Court originally scheduled this conference to follow the close of fact discovery. The completion of fact discovery has been delayed as the parties have negotiated to define the scope and manner of that discovery. Consequently, Plaintiffs do not believe that a meaningful settlement conference with the Court can proceed until that discovery is completed.

On July 9, 2008, Plaintiffs requested that discovery be extended and that the conference be rescheduled. It was our understanding that these and all pre-trial matters had been referred to Magistrate Judge Francis. However, we were just informed on Friday afternoon by Defendant ProThera, Inc.'s ("ProThera") local counsel that the settlement conference would be proceeding before Your Honor despite that referral.

The parties had been engaged in both resolution of discovery disputes and direct settlement negotiations throughout the month of June and early July. In light of a recently improved approach taken by ProThera, Merck believed that the parties would continue their cooperation and that significant discovery could finally take place, and possibly a settlement could be reached.

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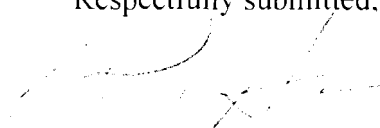
However, the tenor of these discussions has taken a markedly negative turn. Despite ProThera's earlier failure to provide meaningful production of materials, it now has surprisingly refused to join in Merck's request for a discovery extension and rescheduling of the settlement conference, prolonging the gamesmanship it has practiced throughout discovery. At this point, Merck is not in a position to settle without additional time to conduct discovery as set forth in Merck's letter to the Court dated July 9, 2008.

Further, Plaintiffs' principals are located in Switzerland and are not available to attend the settlement conference. At the time of initial scheduling, our client had planned to attend. However, in light of the delays in discovery, the trajectory the settlement discussions have taken and pressing business matters in Europe, our client can no longer be available on the dates originally set for the conference.

As stated in Merck's July 9<sup>th</sup> letter to the Court, we believe it is appropriate that the July 16 settlement conference be adjourned to a later date, at least until Merck has had the opportunity to review ProThera's documents and conduct depositions. At that point Merck can make an informed settlement decision. We ask that the Court adjourn this conference to a date after the extension of discovery being considered by Judge Francis.


Thank you for your consideration of this matter.

Respectfully submitted,



Robert E. Hanlon

cc: Counsel of Record (via first class mail and email)

<u>Conference adjourned. Pursue</u>	
<u>settlement with Magistrate Judge</u>	
<u>Francis.</u>	
SO ORDERED:	
Date: <u>7/14/08</u>	
Richard M. Berman, U.S.D.J.	